



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MOP/166939

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**PRELIMINARY RECITALS**

Pursuant to a petition filed June 29, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Public Assistance Collection Unit in regard to Medical Assistance (MA), a telephonic hearing was held on July 16, 2015. The record was held open post-hearing to allow the petitioner time to submit additional documents, which were received, and to allow the agency an opportunity to respond to those documents, which occurred.

The issue for determination is whether the agency met its burden of proof to establish four overpayments of MA benefits against the petitioner.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Kristine DeBlare  
Public Assistance Collection Unit  
PO Box 8938  
Madison, WI 53708-8938

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. The petitioner's household of 3 was in the MA BadgerCare Plus (BCP) program from at least 2/1/14-2/28/15.
3. Petitioner was also a recipient of FoodShare (FS) and her FS were used in the State of California from December 15, 2013- April 2, 2014, and from April 30, 2014-February 9, 2015. See Exhibits 6 and 22.
4. On February 20, 2015 the agency became aware of petitioner's out of state FS usage. It subsequently requested documentation from petitioner as to her residency.
5. On June 25, 2015 the agency issued four notices of MA overpayments to the petitioner advising her that (1) she had an overpayment of \$3529.48 for the period of 2/1/14-11/30/14 (parents/claim#900437640); (2) she had an overpayment of \$699.28 for the period of 2/1/14-11/30/14 (child/claim # [REDACTED]); (3) she had an overpayment of \$776.23 for the period of 12/1/14-2/28/15 (parents/claim # [REDACTED]) and (4) she had an overpayment of \$242.96 for the period of 12/1/14-2/28/15 (child/claim # [REDACTED]), all due to failure to report move out of state/change of residence due to client error. Exhibits 19.

### DISCUSSION

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. State v. Hanson, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). The court in *Hanson* stated that the policy behind this principle is to assign the burden to the party seeking to change a present state of affairs. In this case, the agency has the burden of proof to establish that the action taken by the agency was proper given the facts of the case. The petitioner must then rebut the agency's case and establish facts sufficient to overcome the agency's evidence of correct action.

The agency may recover any overpayment of MA that occurs because of the following:

1. A misstatement or omission of fact by a person supplying information in an application for benefits under this subchapter or s. 49.665 [BadgerCare].
2. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.
3. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report any change in the recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements.

Wis. Stat. §49.497; see also Wis. Adm. Code, §DHS 108.03(3) and *BadgerCare + Eligibility Handbook*, §§28.1 and 28.2, available online at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm>.

The MA recovery statute clearly provides for recovery of MA when a recipient fails to report any change in the recipient's nonfinancial situation that would have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements. The agency's position was that petitioner failed to report that she moved to California, and residency in Wisconsin is required for eligibility for BCP. See *BadgerCare + Eligibility Handbook*, §3.1. If petitioner moved, she was required to report it. *Id.* at §27.2.

The agency's case largely rests upon her out of state FS usage, and there was no dispute that it occurred. The agency also relies on a faxed document it received from the petitioner which indicates a California fax number. See Exhibit 4. The agency also relies on some conflicting documentation about her lease in Milwaukee that it received from the petitioner and her landlord. See Exhibit 5 vs. Exhibit 16. The agency also found petitioner's explanation of the out of state FS usage not credible.

The petitioner admits her FS were used in California because she had her mother buy her food there and ship it to her in Milwaukee as she had been injured and had no transportation to shop for herself here in Wisconsin, with the exception of April 2014 when a family member was in town and helped her out to shop. She provided her lease for her Milwaukee residence (Exhibit 5), a copy of a WE Energies bill (Exhibit 4) and one relevant shipping receipt showing a mailing from California to Milwaukee in November 2014. See Exhibit 9. The 2 former examples are the types of acceptable verifications for residence under the *FoodShare Wisconsin Handbook* §1.2.6.1. Petitioner also explained that during this time she was trying to “go natural” and had stopped going to the doctor and was no longer taking prescription medications, which goes along with why there were no MA claims during this period. The overpayment occurs because of the capitation rates paid by MA, which are paid regardless of whether a member receives medical services.

While the agency’s findings certainly raise a reasonable suspicion, a suspicion, regardless of how well founded, is not proof. The agency’s case is contradicted by the petitioner’s sworn testimony as well as the few documents she did provide. Under these circumstances, my skepticism amounts to speculation, which does not provide a sufficient legal basis to find that she lived in California. While some of the documents she provided may give cause to question or terminate her MA for failure to verify (an issue not before me on this appeal), this does not amount to proof that she was not living in Wisconsin and subject her to an MA overpayment. Because there is insufficient evidence to contradict the petitioner’s testimony concerning her living arrangements, the agency’s claim fails.

This decision does not mean the agency cannot bring an overpayment case again if it gets better evidence. Petitioner indicated at hearing her agreement to sign releases to get the information the agency is requesting. The petitioner has agreed to provide what she can. Information about her W-2 participation during the relevant timeframes may be helpful to clarify the evidence as well.

### **CONCLUSIONS OF LAW**

The agency has not met its burden of proof to establish overpayments of MA benefits, because it has not established that she lived outside of Wisconsin

**THEREFORE, it is**

### **ORDERED**

That the petition herein be remanded to the agency with instructions to rescind and/or cease collection efforts for MA overpayment claim #900437640, claim # [REDACTED], claim # [REDACTED], and claim # [REDACTED] against the petitioner. These actions shall be taken within 10 days of the date of this Decision. In all other respects, the petition is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 11th day of August, 2015

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\sKelly Cochrane  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on August 11, 2015.

Public Assistance Collection Unit  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability